

Part 12

Partition

78B-6-1201 Partition -- By cotenants of real property.

A person who is a joint tenant or tenant in common with another of real property may bring an action to partition the property for the benefit of each tenant. An action for partition may require the sale of the property if it appears that the partition cannot be made without prejudice to the owners.

Enacted by Chapter 3, 2008 General Session

78B-6-1202 Complaint -- To set forth interests of all parties.

- (1) The interests of all persons in the property, whether the persons are known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff.
- (2) If one or more of the parties, or the share or quantity of interest of any of the parties, is unknown to the plaintiff, uncertain or contingent, or the ownership of the inheritance depends upon an executory devise, or the remainder is a contingent remainder making the parties unknown, that fact must be set forth in the complaint.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1203 Parties -- Only holders of recorded rights necessary.

A person who does not have a conveyance of, or claim a lien on, the property, or some part of it, is not required to be made a party to the action, unless the conveyance or lien has been properly recorded.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1204 Lis pendens required.

- (1) The plaintiff shall file a notice of the action with the recorders of all the counties in which the property is situated. The notice shall contain:
 - (a) a copy of such complaint; or
 - (b) a notice of the pendency of the action, containing:
 - (i) the names of all known parties;
 - (ii) the object of the action; and
 - (iii) a description of the property affected.
- (2) Once the notice is filed, all persons having an interest in the property shall be considered to have notice of the pendency of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1205 Summons -- To whom directed.

The summons shall be directed to:

- (1) all joint tenants;
- (2) tenants in common of all persons having any interest in, or recorded liens upon the property or any portion of the property; and
- (3) any other person claiming any interest in the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1206 Service by publication.

If a party having a share or interest is unknown, or any one of the known parties resides out of the state or cannot be found, the summons may be served upon them by publication in accordance with the Utah Rules of Civil Procedure.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1207 Answer must set forth interests claimed.

- (1) All defendants shall set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property.
- (2) If a defendant claims a lien on the property by mortgage, judgment, or otherwise, the defendant shall state the original amount and date of the mortgage or judgment, and the amounts remaining unpaid. The defendant shall also state whether the mortgage or judgment has been secured in any other way, and if secured, the extent and nature of the security. If this information is not provided, the defendant shall be considered to have waived any rights to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1208 Right of all parties may be determined.

The rights of all parties may be put in issue, tried, and determined by the action. If the court determines a sale of the premises is necessary, the title shall be ascertained to the satisfaction of the court before the judgment of sale can be made. If service of the summons was made by publication, similar proof is required concerning the rights of absent or unknown parties before judgment is rendered. If there are several unknown persons having an interest in the property, their rights may be considered together in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1209 Partial partition allowed -- When.

- (1) If the court determines that it is impracticable or highly inconvenient to make a complete partition among all the parties in interest, the court may first determine the shares or interests respectively held by the original cotenants as if they were the only parties to the action.
- (2) After the initial partition, the court may partition separately each portion allotted among those claiming under a specific tenant whose interest was determined in Subsection (1), unless the parties choose to remain as tenants in common.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1210 When all holders of recorded rights are not made parties -- Procedure -- Reference.

If there are outstanding liens or encumbrances of record upon the property when the action is commenced, the persons holding the liens shall be made parties to the action. If the persons are not made parties, the court shall either order the persons made parties to the action by an amendment or supplemental complaint, or appoint a referee to determine whether the liens or encumbrances have been paid. If the referee determines that amounts remain due, the referee

shall determine whether the amounts are secured or unsecured and the order of precedence among all the liens or encumbrances on the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1211 Notice of appearance before referee -- Referee's report.

- (1) The referee appointed in Section 78B-6-1210 shall set a date to hear from each person holding a lien on the property. The plaintiff shall have a notice and summons served on each person identified in Section 78B-6-1210 who is not a party to the action.
- (2) The summons shall state the specific time and place of the hearing and instruct the person to appear with proof of all amounts due.
- (3) If the person cannot be found, the court may direct service to be made by publication in accordance with the Utah Rules of Civil Procedure.
- (4) The referee shall provide a report to the court detailing his findings. The court shall confirm, modify, or set aside the findings. If the findings are set aside, a new referee may be appointed in accordance with Section 78B-6-1210.

Enacted by Chapter 3, 2008 General Session

78B-6-1212 If partition prejudicial, sale in lieu thereof -- Partition by referees.

- (1) If the court determines that the property or any part of it cannot be partitioned without great prejudice to the owners, the court may order the property sold.
- (2) If the court determines that the property may be partitioned, it shall order a partition according to the respective rights of the parties determined by the court and appoint three referees to do the partition. The court shall also designate a portion to remain undivided for the owners whose interests remain unknown or are not ascertained.
- (3) If the action is for partition of a mining claim among the tenants in common, joint tenants, copartners, or parceners, the court, upon good cause shown by any party or parties in interest, may, instead of ordering partition to be made in the manner as provided, or a sale of the premises for cash, direct the referees to divide the claim in the manner provided in Subsections 78B-6-1213(5) through (11).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1213 Duties and powers of referees -- Procedure.

- (1) In making the partition the referees must divide the property among the respective parties as determined by the court pursuant to the provisions of this part.
- (2) The referees may designate the portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.
- (3) In all cases the court shall direct the referees making the partition to:
 - (a) allot the share of each of the parties owning an interest; and
 - (b) locate the share of each cotenant, including, if possible, the improvements made by the cotenant upon the property.
- (4) The value of the improvements made by tenants in common shall be excluded from the valuation in making allotments if it can be done without material injury to the rights and interests of the other tenants in common.

- (5) If the action is for partition of a mining claim, the court shall order the division of the claim by the referees not less than 20 nor more than 40 days from the date of the order, except by consent of all the parties in interest who have appeared in the action.
- (6) On the day designated in the order the referees shall go to the property to be divided and proceed to divide the property. If the division requires more than one day to complete, the referees shall continue from day to day until the division is completed.
- (7) Two or more of the tenants in common, joint tenants, copartners, or parceners may unite for the purposes of the division. The parties shall give the referees written notice of any unions before the referees begin the division. All who do not unite or give notice of separate action, shall, for the purposes of division, be considered to have united.
- (8) The referees shall recognize:
 - (a) those named in the court order, their agents and attorneys;
 - (b) a guardian of a minor; and
 - (c) a guardian entitled to the custody and the management of the estate of an incompetent or incapacitated person.
- (9) At the time and place of division one of the referees shall be selected to conduct the proceedings in the manner of public auction. The privilege of selecting first shall be offered to the party who agrees to take the smallest portion of the claim in proportion to that party's interest in the claim. Once the bids are closed, the referees shall measure and mark off, by distinct metes and bounds, the portion of the claim designated by the lowest bidder.
- (10) Once the referees have marked off and set apart the interest of the lowest bidder, they shall offer to the remaining parties the privilege of selection as provided, and shall upon closing the bids, proceed in the same manner to locate and mark off the portion of the lowest bidder.
- (11) The bidding shall continue and the interest of the lowest bidder marked off until only one party in interest remains. The party remaining shall become the owner of the remainder of the claim not marked off and set apart for the other parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1214 Report of referees.

The referees shall provide a written report of their proceedings, specifying the manner in which they executed their trust, describing the property divided, and the shares allotted to each party, with a particular description of each share.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1215 Confirmation, modification, or vacation by court -- Effect of death of party before judgment.

- (1) The court may confirm, change, modify, or set aside the report, and if necessary, appoint new referees. Upon the report being confirmed judgment must be rendered that the partition be effectual forever. The judgment shall be binding and conclusive on all persons:
 - (a) named as parties to the action and their legal representatives, who have at the time any interest in the property, whether as:
 - (i) owners in fee;
 - (ii) tenants for life or for years; or
 - (iii) entitled to the reversion, remainder, or the inheritance of the property or of any portion after the determination of a particular estate in it;

- (b) who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;
 - (c) interested in the property who may be unknown, to whom notice of the action for partition has been given by publications; and
 - (d) claiming from any parties or persons in Subsection (1)(c).
- (2) A judgment is not invalid by reason of the death of any party before final judgment or decree, but the judgment or decree is as conclusive against the heirs, legal representatives, or assigns of the decedent as if it had been entered before the person's death.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1216 Tenant for years, less than 10, not affected by judgment.

The judgment does not affect tenants for years, less than 10, of the whole of the property which is the subject of the partition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1217 Referees' expenses and fees -- Apportionment.

The expenses of the referees, including those of the surveyor and his assistants if employed, must be determined and allowed by the court, and the amount, together with the fees allowed by the court in its discretion to the referees, shall be apportioned equitably among the different parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1218 Liens on undivided interests -- Apportionment.

A lien on an undivided interest or estate of any of the parties shall only be a charge on the share assigned to the party after the share is charged with its just proportion of the costs of the partition in preference to the lien.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1219 Setoff of estate for life or for years.

If there is an estate for life or years in an undivided share of the whole property and only a portion of the property is ordered to be sold, the estate may be set off in any part of the property not ordered to be sold.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1220 Proceeds of sale of encumbered property -- Disposition of.

The proceeds of the sale of encumbered property shall be applied under the direction of the court, as follows:

- (1) to pay its just proportion of the general costs of the action;
- (2) to pay the costs of the reference;
- (3) to satisfy and cancel all recorded liens in their order of priority, by payment of the sums due and to become due; the amount due to be verified by affidavit at the time of payment;
- (4) the residue among the owners of the property sold according to their respective shares therein.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1221 Lienholders required to exhaust other security first.

Any party to the action, who holds a lien upon the property or any portion of it and has other securities for the payment of the amount of the lien may be required by the court to exhaust the other securities before a distribution of the proceeds of sale. The court may also order a just reduction to be made from the amount of the lien on the property in the amount of the securities.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1222 Distribution of proceeds or securities.

The proceeds of sale and the securities taken by the referees shall be distributed by the referees to the persons entitled to them whenever the court directs. If no direction for distribution is given, all of the proceeds and securities must be paid into the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1223 Determination of adverse claims.

When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known or unknown, are paid into court, the action may continue between the parties for the determination of their respective claims. Further evidence may be taken by the court or a referee at the discretion of the court, and the court may, if necessary, require the parties to present the facts or law in controversy by pleadings as in an original action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1224 Sales at public auction -- Notice.

All sales of real property made by referees under this part shall be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that fact shall be stated also.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1225 Sales on credit -- Order for.

The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises. For that portion of which the purchase money is required, the court shall also order it to be invested for the benefit of unknown owners, minors or parties out of the state.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1226 Security for payment.

The referees may take separate mortgages and other securities;

- (1) for the whole or convenient portions of the purchase money;
- (2) on any part of the property directed by the court to be sold on credit;
- (3) for the shares of any known owner of full age, in the name of the owner;
- (4) for the shares of a minor, in the name of the guardian of the minor; and

(5) for other shares, in the name of the clerk of the court and his successors in office.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1227 Compensation for interest of tenant for life or years.

A person entitled to a tenancy for life or years whose estate has been sold, is entitled to receive a sum as reasonable compensation for the estate. The person's consent to accept the sum shall be filed in writing with the clerk of the court. Upon the filing of the consent, the clerk shall enter it in the minutes of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1228 Court determines reasonable compensation for tenant.

If consent is not given, filed, and entered as provided in Section 78B-6-1227 before a judgment of sale is rendered, the court shall determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of the estate, and order the amount paid to the party, or deposited in the court for the person, as the case may require.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1229 If tenant unknown.

If persons entitled to the estate for life or years are unknown, the court shall provide for the protection of their rights in the same manner as if they were known and had appeared.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1230 Protection of vested, contingent, or future rights.

In all cases of sales if it appears that any person has a vested, contingent, or future right or estate in any of the property sold, the court shall ascertain and settle the proportionate value of the contingent or vested right or estate, and direct the proportion of the proceeds of the sale to be invested, secured, or paid over in a manner that would protect the rights and interests of the parties.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1231 Terms of sales -- Separate sale of distinct parcels.

In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1232 Who may not be purchaser.

- (1) A referee or any person for the referee's benefit may not be interested in any purchase.
- (2) A guardian of a minor party may not be interested in the purchase of any real property which is the subject of an action under this part except for the benefit of the minor.
- (3) All sales contrary to the provisions of this section are void.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1233 Report of referees to the courts of sales.

- (1) Once the sale of the property or any portion ordered to be sold is complete, the referees shall file a report with the court.
- (2) The report shall include:
 - (a) a description of the different parcels of land sold to each purchaser;
 - (b) the name of the purchaser;
 - (c) the price paid or secured;
 - (d) the terms and conditions of the sale; and
 - (e) the securities, if any, taken.
- (3) The report shall be filed in the office of the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1234 Referees' deed on confirmation -- Disposition of proceeds.

If the sale is confirmed by the court, an order shall be entered directing the referees to execute conveyances and authorizing them to take securities pursuant to sale. The order may also give directions directing the disposition of the proceeds of the sale.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1235 Allowance on purchase price -- When interested party is purchaser.

If a party entitled to a share of the property, or a lienholder entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1236 Conveyance to be recorded -- Operates as a bar.

- (1) The conveyances shall be recorded in the county where the property is located.
- (2) The recording shall be a bar against:
 - (a) all persons interested in the property in any way, who have been named as parties in the action;
 - (b) all parties or persons who were unknown, if the summons was served by publication, and all persons claiming under them; and
 - (c) all persons having unrecorded deeds or liens at the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1237 Investment of sale proceeds for nonresidents or unknown parties.

When there are proceeds of a sale belonging to an unknown owner or to a person outside the state who has no legal representative inside the state, the proceeds shall be invested in bonds of the United States, this state, or a political subdivision of the state for the benefit of the persons entitled the proceeds.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1238 Clerk of court to be custodian.

If the security of the proceeds of the sale is taken, or when an investment of any proceeds is made, it shall be done, except as otherwise provided, in the name of the clerk of the district court. The clerk of the court shall hold the security for the use and benefit of the parties interested, subject to an order of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1239 Distribution of securities to parties entitled.

If security is taken by the referees on a sale, and the parties interested in the security, by an instrument in writing delivered to the referees, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, the securities shall be taken in the names of, and payable to, the parties respectively entitled, and shall be delivered to the parties upon their receipt. The agreement and receipt shall be filed with the clerk of the court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1240 Investment of securities by court clerk -- Accounting.

The clerk of the court in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct. The clerk shall also deposit with the county treasurer all securities taken, and keep an account, in a book provided and kept for that purpose in the clerk's office, free to inspection by all persons, of investments and money received and their disposition.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1241 Equalization.

- (1) If a partition cannot be made equally among the parties according to their respective rights without prejudice to the rights and interests of some of them, and a partition is ordered, the courts may order compensation made by one party to another on account of the inequality.
- (2) Compensation may not be required to be made to others by unknown owners or a minor, unless the court determines that the minor has sufficient personal property to make the payment and the minor's and the minor's interest will not be negatively affected.
- (3) The court has the power in all cases to make compensatory adjustment among the parties according to the principles of equity.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1242 Interests of minor -- Payment to guardian.

If the share of a minor is sold, the court may order the proceeds of the sale to be paid by the referee making the sale to the minor's general guardian or to the special guardian appointed for the minor in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1243 Partition -- Payment of costs -- Enforcement of judgment.

- (1) The costs of partition, including reasonable attorney fees, expended by the plaintiff or any of the defendants for the common benefit, fees of referees and other disbursements shall be paid by the parties entitled to share in the lands divided, in proportion to their respective interests, and may be included and specified in the judgment. The costs shall be a lien on the several shares, and the judgment may be enforced by execution against the shares and against other property held by the respective parties.
- (2) If litigation arises between some of the parties, the court may require the expenses of the litigation to be paid by the parties to the litigation.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1244 One referee instead of three allowed by consent.

The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this part, and the single referee has all the powers, and may perform all the duties, required of the three referees.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1245 Lien for costs and expenses advanced by one for benefit of all.

- (1) The court shall allow expenses incurred, including attorney fees, in prosecuting or defending other actions or proceedings by any one of the tenants in common for the protection, confirmation or perfecting of the title, or setting the boundaries, or making a survey or surveys of the estate partitioned to be recovered by the party incurring the expenses.
- (2) The court shall determine the amounts with interest from the date the expenditures occurred.
- (3) The costs shall be:
 - (a) pleaded and allowed by the court;
 - (b) included in the final judgment;
 - (c) a lien upon the share of each tenant, in proportion to the tenant's interest; and
 - (d) enforced in the same manner as taxable costs of partition are taxed and collected.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1246 Abstract of title -- Costs and inspection.

- (1) If the court determines that it was necessary to have an abstract of the title to the property to be partitioned created and the abstract has been procured by a party to the proceeding, the cost of the abstract, with interest from the date of its creation and availability for inspection by the respective parties to the action, shall be allowed and taxed.
- (2) If the abstract is procured by the plaintiff before the commencement of the action the plaintiff shall file a notice with the complaint that an abstract of the title has been made and is available for the inspection and use of all the parties to the action. The notice shall state where the abstract will be available for inspection.
- (3) If the plaintiff did not procure an abstract before commencing the action, and a defendant procures an abstract, the defendant shall, as soon as it has been directed it to be made, file a notice in the action with the clerk of the court, stating who is making the abstract and where it will be kept when finished.
- (4) The court may direct who may have custody of the abstract.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-1247 Interest on advances to be allowed.

Any disbursement made by a party under the direction of the court during the action shall accrue interest from the date it is made.

Renumbered and Amended by Chapter 3, 2008 General Session